

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SAM JENKINS, SR.,

Plaintiff,

vs.

CIV. No. 98-0190 LH/RLP

THE LAW FIRM OF SAGER,
CURRAN, STURGES & TEPPER, P.C.,
DEBORAH RUPP GONCALVES, P.C.,
and DEBORAH RUPP GONCALVES,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff's Motion for Reconsideration of Final Judgment under Rule 60(B) and Title 42 1983 USC. § [sic], (Docket No. 24). The Court, having reviewed the briefs of the parties and being fully advised in the premises, finds that Plaintiff's motion is without merit and shall be **denied**.

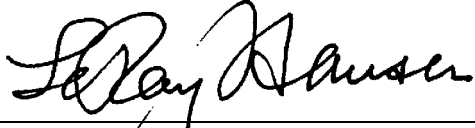
The initial argument in Plaintiff's motion is that, in violation of F.R.Civ.P. 60(b), the final judgment of this Court was without consideration of his inadvertence or excusable neglect as a *pro se* litigant. He argues that this is a violation of the equal protection clause of the United States Constitution. As the Defendants point out in their responsive pleading, this case was not dismissed due to any inadvertence or neglect by the Plaintiff, but because the complaint failed to state a claim under F.R.Civ.P. 12(b)(6). Plaintiff does not state what supposed inadvertence or excusable neglect he refers to in his motion for reconsideration. His motion cannot be granted on

this basis. Furthermore, to the extent that this motion is asserted in lieu of or as a substitute for an appeal, it cannot be considered. It is axiomatic that F.R.Civ.P. 60(b) cannot be used as a substitute for an appeal. 11 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 2864 (2D ED. 1995).

Plaintiff next asserts that 42 U.S. C. § 1983 should be used to set aside this judgment. Plaintiff uses this section of his motion to restate his prior arguments under this statute. Plaintiff is without support and consequently the Judgment will not be set aside on this basis.

This Court has ruled on the lack of merit of Plaintiff's case, the Judgment is final, and no proper grounds exist to declare the Judgment invalid or to set it aside. Plaintiff has failed to appeal the dismissal and the time to do so has passed. Plaintiff's motion for reconsideration is hereby **denied**.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE